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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2052

HERMAN W. NAVARRETE  
705 Revenna Way  
Brentwood, CA 94513

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 7805

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about July 26, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 7805 to Herman W. Navarrete (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2           4.       Section 3710 of the Code states: “The Respiratory Care Board of  
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
4 8.3, the Respiratory Care Practice Act].”

5           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7           6.       Section 3750 of the Code states:

8           “The board may order the denial, suspension or revocation of, or the imposition of  
9 probationary conditions upon, a license issued under this chapter, for any of the following  
10 causes:

11           “(f) Negligence in his or her practice as a respiratory care practitioner.

12           “(g) Conviction of a violation of any of the provisions of this chapter or of any  
13 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
14 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
15 violate any provision or term of this chapter or of any provision of Division 2  
16 (commencing with Section 500).

17           7.       Section 3755 of the Code states:

18           “The board may take action against any respiratory care practitioner who is  
19 charged with unprofessional conduct in administering, or attempting to administer, direct  
20 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,  
21 repeated acts of clearly administering directly or indirectly inappropriate or unsafe  
22 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or  
23 monitoring techniques, and violation of any provision of Section 3750. The board may  
24 determine unprofessional conduct involving any and all aspects of respiratory care  
25 performed by anyone licensed as a respiratory care practitioner.”

1 COST RECOVERY

2 8. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the board,  
4 the board or the administrative law judge may direct any practitioner or applicant found to have  
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
6 investigation and prosecution of the case."

7 9. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
9 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
10 administrative, filing, and service fees."

11 10. Section 3753.1 of the Code states:

12 "(a) An administrative disciplinary decision imposing terms of probation may  
13 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
14 associated with monitoring the probation. "

15 11. California Code of Regulations, title 16, section 1399.370, states:

16 "For the purposes of denial, suspension, or revocation of a license, a crime or act  
17 shall be considered to be substantially related to the qualifications, functions or duties of  
18 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
19 perform the functions authorized by his or her license or in a manner inconsistent with the  
20 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
21 those involving the following:

22 "(a) Violating or attempting to violate, directly or indirectly, or assisting or  
23 abetting the violation of or conspiring to violate any provision or term of the Act."

24 FIRST CAUSE FOR DISCIPLINE

25 (Unprofessional conduct)

26 12. Respondent is subject to disciplinary action under sections 3750(f)  
27 [negligence], 3750(g), and 3755 [unprofessional conduct] in that he failed to stay with a critically  
28 ill patient during a testing procedure. The circumstances are as follows:

1                   13.     Patient G.O. was admitted to Kaiser for multiple chest surgical procedures  
2 for cancer. G.O. was in the intensive care unit and on BIPAP, a mode of ventilation administered  
3 through a mask, per physician's orders. On the evening of October 18, 2005, the treating  
4 physician Dr. S. ordered a "stat" CT scan for the patient, and on October 19, 2005, an 8:00 a.m.  
5 slot was available for the scan.

6                   14.     On or about October 19, 2005, at approximately 7:25 a.m., respondent  
7 arrived to assist the lift team and nursing personnel in transporting patient G.O. to the CT scan.  
8 Patient G.O. was utilizing a BIPAP device at 12/7 70% oxygen to maintain adequate  
9 oxygenation, which Dr. S. had ordered. The patient's nurse received a verbal order from Dr. S.  
10 to remove the patient from BIPAP, and place him on 100% oxygen via non-rebreather mask  
11 (NRM). Respondent removed the patient from BIPAP and placed him on 100% oxygen via non-  
12 rebreather mask (NRM). Respondent assessed the patient off the BIPAP and on the NRM. The  
13 patient's saturation rate was 95%, and his respiratory rate and heart rate were stable.

14                  15.     The lift team and nursing personnel took the patient to the CT scan room  
15 via elevator, and Respondent walked down the stairs to meet them in the CT scan room.  
16 Respondent assessed the patient again in the CT scan room by checking the monitor and  
17 observed that the patient's vital signs were good. Respondent connected the NRM to extralong  
18 oxygen tubing and then to the oxygen flowmeter, then respondent left the patient before the CT  
19 scan was completed. Respondent returned to his department to finish report from the night shift.

20                  16.     During the procedure, the patient desaturated and was transported to the  
21 Critical Care Unit where a code was called. The patient suffered a respiratory arrest.

22                  17.     Therefore, the respondent's license is subject to discipline pursuant to  
23 code sections 3750(f) [negligence], 3750(g), and 3755 [unprofessional conduct], in that he failed  
24 to stay with a critically ill patient during a CT scan procedure.

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking or suspending Respiratory Care Practitioner License Number  
5 7805, issued to Herman W. Navarrete.

6 2. Ordering Herman W. Navarrete to pay the Respiratory Care Board the  
7 costs of the investigation and enforcement of this case, and if placed on probation, the costs of  
8 probation monitoring;

9 3. Taking such other and further action as deemed necessary and proper.

10  
11 DATED: January 26, 2007

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14 Original signed by Liane Zimmerman for:  
15 STEPHANIE NUNEZ  
16 Executive Officer  
17 Respiratory Care Board of California  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

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